**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH**

**...**

**Criminal Misc. No.39671-M of 2006**

Decided on : November 26, 2007

**Ranbir Singh and others**

**...** Petitioner

VERSUS

**The State of Haryana and another**

**...** Respondents

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Rakesh Nehra, Advocate for the petitioner.

Mr.K.S.Godara, Deputy Advocate General
for the respondent – State of Haryana.

A.N.JINDAL, J.-

This petition under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) is for quashing FIR No.323 dated 2.10.2004 under Sections 498-A, 452, 406 and 506 read with Section 34 of the Indian Penal Code (for short IPC), registered at Police Station Jhajjar, District Jhajjar.

The facts in the backdrop of the case are that Ranbir Singh (petitioner No.1) was married to Santra (respondent No.2) on 26.6.1978 as per Hindu Rites. Out of the wedlock of the parties, two children, namely; Chinki and Manjit were born. Due to the temperamental differences and lack of understanding, the parties could not live together. Therefore, the

marriage stood irretrievably broken. As such, the petitioners have been living separately for the last fifteen years from respondent No.2. The First Information Report (Annexure P-1) further reveals that on 24.6.2004 at about 4.00 p.m, petitioner No.1 along with Kapur Singh and Anita, both petitiones No.2 and 3, respectively, went to the house of the sister of respondent No.2, namely Sumitra and gave her beatings, took away both the children forcibly. They also threatened that if the matter was put to the police, then it will be dealt with strenuously. However, Manjit Singh, her son managed to escape, but Chinki is in illegal custody of petitioner No.1 since 24.6.2004. Eventually, she has prayed that she may be delivered the custody of the minor. The other allegations levelled in the First Information Report are that petitioner No.1 developed illicit relations with Anita alias Neeta.

The State has filed the reply admitting the registration of the case and about separate residence of both the parties for the last fifteen years. It has been further admitted that there was no complaint about maltreatment or demand of dowry till May, 2004. Consequently, the prayer to dismiss the petition has been made.

Arguments heard. Records perused.

On appraisal of the narration of the First Information Report, I am constrained to hold that if the allegations as mentioned in the FIR are taken on its face value, no offence under Sections 406, 498-A, 452 and 506 read with Section 34 IPC is made out. If the petitioners being the relatives of Santra, had visited the house of her sister Sumitra, then they cannot be said to have committed tress-pass. There is nothing in the FIR that the

petitioners ever knew that respondent No.2 was in the house of Sumitra. No allegation regarding having suffered injuries by the complainant – respondent No.2 has been levelled. The complete reading of the FIR only smells of a complaint regarding taking away of Chinki by the petitioners forcibly, but that too turned out to be false as during the judicial remand of the petitioners, Chinki, aged about 17 years, a student of 10+2 appeared before the Chief Judicial Magistrate, Jhajjar on 27.10.2004 (Annexure P-3) and expressed that she was residing with petitioner No.1 of her own and she would like to live with him. This voluntary statement smashes the case of the respondent as a whole.

Now, coming to the offence under Section 506 and 498-A IPC, it can be recalled that the FIR contained only allegation that the petitioners had been beating her and always taunting her for bringing less dowry by saying that they are not at par with petitioner No.1. This vague allegation is hardly sufficient to hold that the petitioners had been demanding dowry and beating the petitioner on that account. There are three petitioners and no specific allegations has been levelled against them individually as to what was demanded by each of them. The complainant has also not explained as to what the accused were demanding. Further more, the complainant has specifically mentioned in the FIR that they are living separate for the last fifteen years. Therefore, the question of demanding dowry or causing harassment on that account at the hands of the petitioners, does not arise. This stale litigation without any further proof, can just be termed as a device to involve the petitioners in this false case, obviously, to settle down

the old scores and also a pressure tactic for obtaining the custody of Chinki. The criminal law is meant to redress the grievance of the complainant against the highhandedness of the wrongdoer, which has been done by him intentionally, dishonestly, forcibly and with a motive, but this FIR registered after twenty-six years of the marriage and fifteen years of separation can be said to be nothing but a misuse of the process and with a motive to harass, malign and damage the peaceful lives of the petitioners. While settling the parameters for quashing the FIRs and certain proceedings, the Apex Court issued some guidelines in case **State of Haryana vs. Bhajan Lal,** *1991(1) RCR(Crl.) 383*, for quashing of a complaint/FIR/Criminal Proceedings, as under:-

> "(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) to (4) .....
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) .....
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> (7) Where a criminal proceedings is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private or personal grudge."

The above guidelines were later reiterated and followed by the Apex court in a series of judgments with some minor additions/alterations here and there depending upon the facts and circumstances of the case. The Court went a step further in **Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre and others**, *1988(1) RCR(Crl.) 565(SC)*, to hold that Court process could not be allowed to be sued for oblique purpose and that it was for the Court to consider whether it was in the interest of justice to allow a criminal prosecution to continue. It said:-

> "The legal position is well settled that when a prosecution, at the initial state, is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case also, quash the proceedings even though it may be at a preliminary stage."

From bare reading of the above, I observe this Court is fully

competent to quash the proceedings under Section 482 Cr.P.C, where the law has been set in motion with a malafide intention or maliciously instituted with ulterior motive to solve a different score. In the present case, admittedly, the parties were residing separately for the last fifteen yeas and no quarrel took place between them during all this period. There was no dispute with regard to the demand of dowry even prior or during the period of separation, but abruptly the present FIR was lodged with the oblique motive to have the custody of minor Chinki, who while appearing in the Trial Court disclosed that she wanted to live with her father – petitioner No.1. Thus, the registration of the FIR, in the given circumstances of the case, was an abuse of the process of law, and, thus, the continuance of the proceedings in the FIR in question cannot be allowed to sustain.

Consequently, the present petition is allowed and the FIR No.323 dated 2.10.2004 registered under Sections 498-A, 452, 406 and 506 read with Section 34 IPC at Police Station Jhajjar, district Jhajjar and all further proceedings having arisen therefrom, are hereby quashed.

( A.N.JINDAL )
JUDGE

The 26th day of November, 2007
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To be Referred to Reporter - **Yes/ No**